IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

MFA.No. 692 of 2002()

OP(MV).930/1995 of IIND ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL,KOLLAM.
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APPELLANT: PETITIONER

SUDHAKARAN PILLAI C.,
PAIKKATTU VEEDU, MANAKKARA MURI,
SASTHAMCOTTA VILLAGE, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR
SMT.C.G.PREETHA
SMT.T.V.NEEMA

RESPONDENTS:
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1. **UTHAMAM(DRIVER), S/O.BHASKARAN,**
   BHASKARA VILASOM, AMBALATHUMBHAGOM P.O.,
   PORUVAZHI (VIA), KOLLAM.

2. **K.A.RABUKHAN(OWNER),**
   S/O.P.A.ALIYARKUNJU, ARAB NIVAS,
   MULLIKKALA, THEVALAKKARA P.O.,
   CHAVARA, KOLLAM.

3. **THE DIVISIONAL MANAGER,**
   NEW INDIA ASSURANCE COMPANY LTD.,
   K.S.F.E. BUILDING, CHINNAKKADA, KOLLAM.

BY ADV. SRI.M.RAJAGOPALAN - R3
SRI.RAJIT

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.692 of 2002

Dated this the 5th November, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.) No.930/1995, on the file of the Additional Motor Accidents Claims Tribunal, Kollam, is the appellant. This appeal is filed by the claimant challenging the quantum of compensation awarded to him. Appellant sustained injuries in a motor vehicle accident on 3.4.1995. He filed the original petition claiming compensation impleading the owner, driver and insurer of the lorry, which according to the appellant caused injuries. The case of the appellant was that he was riding a motor cycle from west to east. When it reached the place of accident, a lorry bearing Registration No.KEE 3876 came and hit against the motor cycle, causing injuries to him. According to the appellant, the lorry was driven by the first respondent driver in a rash or negligent manner. So, he claimed compensation. The owner and driver did not contest the matter. The appellant alone contested the matter. It was contended that the appellant sustained only minor injuries. It was contended that the first respondent was driving the lorry in a normal speed and the accident occurred due to the negligence of the appellant himself. The quantum

of compensation claimed was also disputed. The coverage of policy was however admitted. The Tribunal found that in view of the description of the place of accident in the scene mahazar, the appellant also contributed to the accident, and he is 60% responsible for the same. Based on that document, the Tribunal came to the conclusion that the vehicle in which the appellant was driving went to the wrong side and hence he is 60% responsible. In the Original Petition, it was averred that the appellant was riding a motor cycle from east to west and when he negotiated a curve and turns north, the lorry came and hit against him. But at the time of evidence, he deposed that he was overtaking another vehicle. I also agree with the finding of the Tribunal that the accident occurred due to the negligence of the appellant also. But I find it difficult to agree with the proportion fixed by the Tribunal. The respondent did not adduce any evidence. The only evidence available was that of the evidence rendered by the appellant. He was not specifically cross examined with reference to the spot of accident. On oral evidence, he deposed that the accident took place while he was overtaking his vehicle. There is no material to show that overtaking was done in a rash or negligent manner. So the mere fact that at the time of accident, the motor cycle in which the appellant was riding was from east of the central point of the road

alone is not a ground to hold that the appellant is 60% responsible. According to me, the facts and circumstances only justifies 35%, the other vehicle being liable to the tune of 65%. In all other aspects, I confirm the awards passed by the Tribunal.

In view of my modified judgment, the appellant is entitled to get 65% of the compensation which is awarded, which will come to Rs.13,975/=. Appellant was given an amount of Rs.8600/=. So he is entitled to get the balance amount of Rs.5375/=, which is rounded to Rs.5380/=, which will carry interest at the rate of 6%, from the date of petition till the date of realisation. The 3rd respondent, Insurer, is directed to deposit that amount. On deposit, the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.692 of 2002

J U D G M E N T

Dated:5th November, 2007.